



DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R6–ES–2011–0039]

[92220–1113–0000–C6]

RIN 1018–AX94

Endangered and Threatened Wildlife and Plants; Removal of the Gray Wolf in Wyoming from the Federal List of Endangered and Threatened Wildlife and Removal of the Wyoming Wolf Population’s Status as an Experimental Population

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment period on our October 5, 2011, proposal to remove the gray wolf (*Canis lupus*) in Wyoming from the List of Endangered and Threatened Wildlife. This

proposal relied heavily on Wyoming's wolf management plan and noted that conforming changes to State law and regulation would be required to allow Wyoming's plan to be implemented as written. Wyoming recently completed four documents that clarify Wyoming's approach to wolf management should we delist the gray wolf in Wyoming, including revised State statutes, revised gray wolf management regulations (chapter 21), revised gray wolf hunting season regulations (chapter 47), and an Addendum to the Wyoming Gray Wolf Management Plan. We are reopening the comment period for the proposal to allow all interested parties an additional opportunity to comment on the proposed rule in light of these documents. If you submitted comments previously, you do not need to resubmit them because we have already incorporated them into the public record and will fully consider them in preparation of the final rule.

DATES: We will consider all comments received or postmarked on or before **[INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** section, below) must be received by 11:59 p.m. Eastern Time on the closing date.

ADDRESSES: You may submit comments by one of the following methods:

(1) Electronically: Go to the Federal eRulemaking Portal:

<http://www.regulations.gov>. Search for FWS-R6-ES-2011-0039, which is the docket number for this rulemaking. On the search results page, under the Comment Period

heading in the menu on the left side of your screen, check the box next to "Open" to locate this document. Please ensure you have found the correct document before submitting your comments. If your comments will fit in the provided comment box, please use this feature of <http://www.regulations.gov>, as it is most compatible with our comment review procedures. If you attach your comments as a separate document, our preferred file format is Microsoft Word. If you attach multiple comments (such as form letters), our preferred format is a spreadsheet in Microsoft Excel.

(2) By hard copy: Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R6–ES–2011–0039; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see “**Public Comments**” in **SUPPLEMENTARY INFORMATION** for more information).

FOR FURTHER INFORMATION CONTACT: For information on wolves in the northern Rocky Mountains see <http://www.fws.gov/mountain-prairie/species/mammals/wolf/>, or contact U.S. Fish and Wildlife Service, Mountain-Prairie Region Office, Ecological Services Division, 134 Union Blvd., Lakewood, CO 80228; telephone 303–236–7400. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Public Comments

We will accept written comments and information during this reopened comment period on the October 5, 2011, proposal (76 FR 61782) to remove the gray wolf (*Canis lupus*) in Wyoming from the List of Endangered and Threatened Wildlife in light of four recently revised documents that clarify Wyoming's approach to wolf management should we delist the gray wolf in Wyoming, including: revised State statutes; a revised gray wolf management regulations (chapter 21); a revised gray wolf hunting season regulations (chapter 47); and an Addendum to the Wyoming Gray Wolf Management Plan. Copies of the revised State statute, Wyoming's "Gray Wolf Management" regulations (chapter 21), "Gray Wolf Hunting Seasons" regulations (chapter 47), and the Addendum to the Wyoming Gray Wolf Management Plan are available: on the Internet at <http://www.regulations.gov> or <http://www.fws.gov/mountain-prairie/species/mammals/wolf/>; or upon request from the Mountain-Prairie Region Office, Ecological Services Division (see **FOR FURTHER INFORMATION CONTACT**). We will consider information and recommendations from all interested parties.

You may submit your comments and materials concerning the proposed rule by one of the methods listed in **ADDRESSES**. We will not accept comments sent by e-mail

or fax or to an address not listed in **ADDRESSES**. If you submit a comment via <http://www.regulations.gov>, your entire comment—including your personal identifying information—will be posted on the website. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy comments on <http://www.regulations.gov>.

Comments and materials we receive, as well as supporting documentation we used in preparing the proposed rule, will be available for public inspection on <http://www.regulations.gov>, or by appointment, during normal business hours, at the Mountain-Prairie Region Office (see **FOR FURTHER INFORMATION CONTACT**).

Background

On October 5, 2011, we proposed to remove the gray wolf in Wyoming from the List of Endangered and Threatened Wildlife (76 FR 61782). This proposal relied heavily on Wyoming's 2011 wolf management plan (Wyoming Game and Fish Commission (WGFC) 2011) and noted that conforming changes to State law and regulation would be required to allow Wyoming's plan to be implemented as written. These changes have now been finalized by Wyoming.

Following publication of the proposal, we began discussions with Wyoming on necessary or advisable revisions to its State statutes. On January 9, 2012, we notified the Governor of Wyoming that draft legislative language, developed by the State in consultation with the Service, should provide an acceptable legal basis for implementing the State's Gray Wolf Management Plan (Ashe 2012a). This legislation was passed by the Wyoming legislature during the 2012 session and, on March 7, 2012, was signed by the Governor of Wyoming and became law.

Wyoming also developed an Addendum to the Wyoming Gray Wolf Management Plan to address concerns raised by the independent peer review panel that evaluated our proposed rule and its supporting information. The addendum, developed by the State in consultation with the Service, provides additional clarification and detail about the Wyoming Game and Fish Department's approach to managing wolves. On March 5, 2012, Wyoming released the addendum for public review and comment. The Wyoming Game and Fish Commission approved a final version of the addendum on March 22, 2012.

In early 2012, we began discussions with Wyoming on necessary or advisable revisions to its State regulations including Wyoming's "Gray Wolf Management" regulations (chapter 21) and "Gray Wolf Hunting Seasons" regulations (chapter 47). On March 9, 2012, we notified the Governor of Wyoming that we regard the draft revised regulations, developed by the State in consultation with the Service, to be consistent with State law and Wyoming's conditionally approved Wolf Management Plan (Ashe 2012b).

On March 9, 2012, the Wyoming Game and Fish Department made the proposed regulations available for public review and comment. The Wyoming Game and Fish Commission approved a final version of these revised regulations at their April 25–26, 2012, meeting.

Highlights of Recently Released Wyoming Management Documents

Population Management – The Addendum to the Wyoming Gray Wolf Management Plan reaffirms Wyoming’s commitment to manage the wolf population with a buffer above the agreed-upon population minimums of at least 10 breeding pairs and at least 100 wolves in Wyoming outside of Yellowstone National Park and the Wind River Indian Reservation at the end of the calendar year (WGFC 2012, pp. 3–5). The addendum adopts this approach, as it would provide the greatest assurance that minimum agreed-upon population targets can be confidently exceeded on an annual basis, and that Wyoming would not risk managing wolves near minimum recovery levels (WGFC 2012, p. 5). Furthermore, Wyoming clarified that the buffer would be applied solely within Wyoming’s portion of the population in the Wyoming Trophy Game Management Area (WTGMA) (i.e., wolves in Yellowstone National Park and the Wind River Indian Reservation would not constitute the buffer) (WGFC 2012, p. 5). Regarding the size of the buffer, no specific number or range was offered. Instead, Wyoming noted that the buffer would be determined through an adaptive management approach and may fluctuate based on natural population dynamics and the effects of specific management actions (WGFC 2012, p. 4).

The Addendum to the Wyoming Gray Wolf Management Plan also reaffirms and clarifies Wyoming's intention to use an adaptive management framework based on intensive monitoring efforts to ensure minimum population objectives are never compromised (WGFC 2012, pp. 5–7). The addendum explains that, because of additional human-caused mortality, Wyoming would monitor the wolf population more intensively than the Service has in the past, and that this effort would become more intense as the population approaches minimum population objectives (WGFC 2012, p. 5). Regarding management responses, the addendum clarifies that if the minimum population objectives are approached, the State would sequentially limit: control actions for unacceptable impacts to ungulates; harvest levels; control for damage to private property; and lethal take permits (WGFC 2012, p. 7). The last item in this sequential list (lethal take permits) is discussed further below. Regarding hunting specifically, the addendum notes that Wyoming would employ an iterative, adaptive, and public process whereby season structures, hunt areas, and quotas are evaluated and adjusted based on the response of the wolf population to prior management actions (WGFC 2012, pp. 4–7). Furthermore, the addendum notes Wyoming's authority to revise, reduce, or close hunting seasons if necessary (WGFC 2012, pp. 6–7).

The Addendum to the Wyoming Gray Wolf Management Plan also confirms the State's intention to manage wolf numbers to gradually reduce the wolf population over a series of years (WGFC 2012, p. 6). This will give the State an opportunity to understand how to best manage wolves in Wyoming, while not risking relisting of wolves under the

Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (WGFC 2012, p. 6). Within the WTGMA, at the end of 2011, there were at least 177 wolves in at least 29 packs (including 16 breeding pairs), as well as at least 4 lone wolves; within the seasonal WTGMA, at the end of 2011, there were at least 10 wolves in at least 2 packs (including 1 breeding pair), as well as at least 5 lone wolves (Jimenez 2012, in litt.). If we delist the gray wolf in Wyoming, the State intends to authorize a hunting quota of 52 wolves in 2012, and once reproduction is accounted for, the State believes this would reduce the population by about 10 percent within the WTGMA (Mills 2012, pers. comm.). Specifically, Wyoming estimates the population within the WTGMA would be around 170 wolves and 15 breeding pairs at the end of 2012 (Mills 2012, pers. comm.). We note that this first year goal is comfortably above the minimum agreed-upon population targets.

In the permanent predator area, we estimated there were at least 22 wolves in at least 5 packs (including 2 breeding pairs), and at least 6 lone wolves at the end of 2011 (Jimenez 2012, in litt.). Additionally, 1 pack with 3 wolves (the Owl Creek pack on the Wind River Indian Reservation) borders and likely spends a significant portion of its time in the predator area (Jimenez 2012, in litt.). We believe few of the wolf packs in predator portions of Wyoming would persist to the end of 2012, although some individuals from these packs could survive as lone animals. Similarly, some of the current lone wolves in the predator area would be killed. Because none of the packs resident to the WTGMA are known to spend a significant portion of their time in the predator portions of

Wyoming (Jimenez 2012, in litt.), the predator designation would not be expected to meaningfully impact wolves in the WTGMA (Jimenez 2012, pers. comm.).

Regarding genetics, Wyoming's gray wolf management regulations indicate the State is committed to managing gray wolves in Wyoming to ensure that genetic diversity and connectivity issues do not threaten the population (Chapter 21, section 4(a)(ii)). This regulation goes on to say this commitment would be accomplished by encouraging effective migrants into the population in accordance with the Wyoming Gray Wolf Management Plan (Chapter 21, section 4(a)(ii)). The Addendum to the Wyoming Gray Wolf Management Plan indicates the Wyoming Game and Fish Department would strive for a minimum genetic target of ~1 effective migrant per generation (WGFC 2012, pp. 6–7). If this minimum target is not achieved, the Wyoming Game and Fish Department would first consider changes to the monitoring program, if the increased monitoring is likely to overcome the failure to document the desired level of gene flow (WGFC 2012, p. 6). If the Wyoming Game and Fish Department determines increased monitoring is unlikely to detect adequate levels of genetic interchange, or they determine that sufficient interchange is not occurring regardless of monitoring efforts, they would alter management, including reducing mortality quotas in dispersal corridors or reducing total mortality quotas over a series of years to increase the probability that migrants into the population survive and reproduce (WGFC 2012, pp. 6–7). Translocation of wolves between subpopulations would only be used as a stop-gap measure, if necessary to increase genetic interchange (WGFC 2012, p. 7). These efforts would be coordinated with Montana and Idaho (WGFC 2012, p. 7).

Variations or Clarifications from What was Described in the Proposed Rule

Lethal Take Permits – Consistent with the Wyoming Gray Wolf Management Plan (WGFC 2011, pp. 22–23, 32), the proposed rule explained that the Wyoming Game and Fish Department “may” issue lethal take permits in chronic depredation areas. However, Wyoming law (W.S. 23–1–304(n)) states that permits “shall be issued” to landowners or livestock owners in cases where wolves are harassing, injuring, maiming, or killing livestock or other domesticated animals, and where wolves occupy geographic areas where chronic wolf predation occurs. This mandatory approach to issuance of lethal take permits is a significant change from both current management and our summary of anticipated State management provided in the proposed rule. Another meaningful change from current Federal management is Wyoming’s allowance for lethal take permits for “harassment.” While these factors indicate lethal take permits could become a significant source of mortality if we delist the gray wolf in Wyoming, numerous safeguards are in place that limit their potential to meaningfully and detrimentally impact the population.

For example, State statute requires that permits be issued, and renewed as necessary, in 45-day increments (W.S. 23–1–304(n)), and State regulations limit the take allowance for each permit to a maximum of 2 gray wolves, and specify that each permit can only apply to a specified limited geographic or legally described area (Chapter 21, section 7(b)(ii)). These requirements ensure application of this source of take is limited

in time and geography. Similarly, State regulations indicate that purported cases of wolf harassment, injury, maiming, or killing must be verified by the Wyoming Game and Fish Department (Chapter 21, section 6(b)). We believe this requirement for Wyoming Game and Fish Department verification would limit potential abuse for this source of mortality. Finally, and most importantly, State law (W.S. 23-1-304(n)) and the implementing regulation (Chapter 21, section 7(b)(iii)) clarify that existing permits would be cancelled, and issuance of new permits would be suspended, if the Wyoming Game and Fish Department determines further lethal control “could” compromise the State’s ability to maintain a population of at least 10 breeding pairs and at least 100 wolves in Wyoming outside of Yellowstone National Park and the Wind River Indian Reservation at the end of the calendar year. Importantly, the word “could” (as opposed to would or will) provides authority for the Wyoming Game and Fish Department to manage for a buffer above the minimum target and limit control from lethal take permits, if necessary, to maintain an adequate minimum buffer. However, the Addendum to the Wyoming Gray Wolf Management Plan explains that the State law’s mandatory approach to issuance of lethal take permits requires that Wyoming’s adaptive management framework limit other discretionary sources of mortality before it limits this source of mortality (WGFC 2012, p. 7).

On the whole, the available information indicates that, if we delist the gray wolf in Wyoming, Wyoming’s approach to lethal take permits may impact population abundance (particularly at a localized level where wolf-livestock conflict is high), but that Wyoming has instituted sufficient safeguards to ensure that this source of mortality

would not compromise the State's ability to maintain a population of at least 10 breeding pairs and at least 100 wolves in Wyoming outside of Yellowstone National Park and the Wind River Indian Reservation at the end of the calendar year.

Management on the Wind River Indian Reservation – Another issue incorrectly characterized in the proposed rule is wolf management within the Wind River Indian Reservation. Specifically, the proposed rule noted that wolves would be classified as game animals within the Wind River Indian Reservation's boundaries. This assumption was reflected in the proposal's discussion of the percentage of Wyoming where wolves would be protected or managed as a game animal, as this calculation considered the entire reservation as game. However, the Addendum to the Wyoming Gray Wolf Management Plan clarifies that, if we delist the gray wolf in Wyoming, wolves would be classified as predators on non-Indian fee titled lands within the Wind River Indian Reservation's boundaries (WGFC 2012, p. 3). This altered interpretation would have minimal impact on wolf management and abundance, as these inholdings tend to be concentrated on the eastern side of the reservation outside of reported areas of wolf activity (Shoshone and Arapaho Tribal Fish and Game Department 2007, Figure 1). Furthermore, this change in our understanding is likely of little biological consequence as the proposed rule noted an expectation that the reservation would likely support only a "very modest... number of wolves." Therefore, this change does not alter our perspective on the viability of the Wyoming wolf population should delisting move forward.

Management Authority and Hunting – Following publication of the proposed rule, many members of the public expressed confusion about what it means to be included in the WTGMA and whether hunting would occur within National Park Service and National Wildlife Refuge System units. First, let us clarify that nothing in the proposed rule would alter, or in any way affect, the jurisdiction or authority of the State of Wyoming, the National Park Service, and the U.S. Fish and Wildlife Service with respect to the regulation of hunting in any unit of the National Park System or National Wildlife Refuge System. Whatever jurisdiction or authority the State and the respective Services had to authorize, prohibit, or regulate hunting in such areas prior to any final rule would be unchanged by the promulgation of that rule (except, of course, that, if adopted, the proposed rule would remove the protections of the Endangered Species Act from wolves wherever they may occur in Wyoming).

Wyoming regulations (Chapter 21, section 2; Chapter 47, section 4) and the Addendum to the Wyoming Gray Wolf Management Plan (WGFC 2012, p. 3) clarify management authority over various portions of the WTGMA. Specifically, Wyoming clarified that the State of Wyoming has no management authority in Yellowstone National Park, on lands administered by the National Park Service within Grand Teton National Park, on National Wildlife Refuges, and on lands within the Wind River Indian Reservation except non-Indian owned fee titled lands (as discussed above) (WGFC 2012, p. 3). Wyoming further clarified that, if we delist the gray wolf in Wyoming, wolves present within Grand Teton National Park and the National Elk Refuge would be designated as trophy game animals solely for the purposes of counting wolves toward the

State's agreed-upon management objectives (WGFC 2012, p. 3), and that any planned allowance for hunting would not apply in these areas (Chapter 47, section 4(a)).

Although some hunting is currently allowed in the John D. Rockefeller Jr. Memorial Parkway under the Parkway's enabling legislation and Wyoming law, Wyoming's hunting regulations are clear that gray wolf hunting would be closed in the Parkway for at least 2012 (Chapter 47, section 4(i)).

While such clarifications are important to have a complete understanding of wolf management, if we delist the gray wolf in Wyoming, these characterizations of authority and clarifications of intention have little, to no, biological impact on the ability of Wyoming's regulatory framework to satisfy its agreed-upon management objectives.

Service Assessment

The Service has reviewed the recently finalized Wyoming wolf management documents (including revised State statutes, revised gray wolf management regulations (chapter 21), revised gray wolf hunting season regulations (chapter 47), and an Addendum to the Wyoming Gray Wolf Management Plan), and concludes that the revisions to these documents are consistent with the conditionally approved Wyoming Gray Wolf Management Plan. Based on our review, we believe Wyoming's regulatory framework would likely maintain a population of at least 10 breeding pairs and at least 100 wolves in Wyoming outside of Yellowstone National Park and the Wind River Indian Reservation at the end of the calendar year and, when considered in the context of

management across the entire State and the entire Northern Rocky Mountain (NRM) region, that the regulatory framework would likely maintain Wyoming's share of a recovered NRM gray wolf population and contribute to the continued maintenance of the larger NRM gray wolf population above minimum recovery levels.

Peer Review

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), we intend to subject this proposal to peer review. Specifically, the peer review will evaluate the proposal in light of the four recently completed documents that clarify Wyoming's approach to wolf management should we delist the gray wolf in Wyoming, including: revised State statutes; revised gray wolf management regulations (chapter 21); revised gray wolf hunting season regulations (chapter 47); and an Addendum to the Wyoming Gray Wolf Management Plan. We anticipate this peer review will be completed and provided to the Service during the public comment period. Once available, we intend to post the peer review comments online at <http://www.regulations.gov> and <http://www.fws.gov/mountain-prairie/species/mammals/wolf/>. We will consider all comments and information provided by the public and peer reviewers during this comment period in preparation of a final determination on our proposed delisting. Accordingly, the final decision may differ from our proposal.

References Cited

A complete list of references cited is available: on the Internet at *<http://www.regulations.gov>* or *<http://www.fws.gov/mountain-prairie/species/mammals/wolf/>*; or upon request from the Mountain-Prairie Region Office, Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this notice are staff members of the Mountain-Prairie Region Office, Ecological Services Division, U.S. Fish and Wildlife Service (see **FOR FURTHER INFORMATION CONTACT**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: April 17, 2012

Signed: Daniel M. Ashe

Director, U.S. Fish and Wildlife Service

Billing Code 4310–55–P

[FR Doc. 2012-10407 Filed 04/30/2012 at 8:45 am; Publication Date: 05/01/2012]